

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SUBREGION 17**

**INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE WORKERS,  
AFL-CIO, DISTRICT 70 AND LOCAL LODGE 839  
(Spirit Aerosystems)**

**Case 14-CB-133028**

**and**

**RYAN KASTENS, an Individual**

**and**

**SPIRIT AEROSYSTEMS**

**COUNSEL FOR THE GENERAL COUNSEL'S  
OPPOSITION TO RESPONDENT'S  
PETITION TO REVOKE SUBPOENAS DUCES TECUM**

On January 27, 2015, Respondent filed a Petition to Revoke In Part Subpoenas Duces Tecum in response to two subpoenas issued by Counsel for the General Counsel on January 21, 2015. Counsel for the General Counsel opposes Respondent's Petition to Revoke, which seeks the revocation or limitation of nearly every paragraph of the attachment to Subpoena Duces Tecum B-1-KUHZMR (District 70 Subpoena), and the attachment to Subpoena Duce Tecum B-1-KUH577 (Local Lodge 839 Subpoena). As explained below, the subpoenas in issue are narrowly drafted and tailored to require production of information relevant to issues raised by the pleadings. Contrary to Respondent's Petition, the subpoenas do not require the production of confidential information or information that raises privacy concerns, and they do not require production of privileged information. Furthermore, Respondent has not established any support for its position that it is privileged to withhold documents concerning union communications, and it has not established that particular subpoena paragraphs are overbroad or that compliance would be unduly burdensome.

***I. Issues in Dispute***

The trial in this matter is scheduled to begin on February 19, 2015, based on a Complaint and Notice of Hearing issued on November 26, 2014. Paragraph 5 of the Complaint alleges that Respondent violated Sections 8(b)(1)(A) and 8(b)(2) by attempting to cause and causing Spirit Aerosystems, Inc. (Employer) to

discharge Ryan Kastens and Jarrod Lehman because of their dissident union activity. Paragraph 6 alleges that Respondent, by agent Howard Johnson, threatened employees with bodily injury and threatened to discriminatorily process employees' grievances because they engaged in dissident union activity in violation of Section 8(b)(1)(A). Paragraph 7 alleges that Respondent refused to process to arbitration grievances concerning Ryan Kastens' suspensions and discharge because of Kastens' dissident union activity and/or processed Kastens' grievances in a perfunctory and arbitrary manner.

On December 17, 2014, Respondent filed a First Amended Answer wherein it denies the allegations in Complaint paragraphs 5, 6, and 7 and asserts a number of affirmative defenses.

## ***II. The Legal Framework***

The Board is authorized under Section 11(1) of the Act to subpoena "any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question." *NLRB v. G.H.R. Energy Corp.*, 707 F.2d 110, 113 (5th Cir. 1982). Section 102.31(b) of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, authorizes an administrative law judge to revoke a subpoena only in those circumstances in which "the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid." Subpoenaed information must be produced if the information sought is "not plainly incompetent or irrelevant to any lawful purpose." *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 509 (1943). See also *General Engineering, Inc.*, 341 F.2d 367, 372 (9th Cir. 1985). Thus, a subpoenaed party must produce subpoenaed information that relates to matters in question or that can provide background information or information that can lead to other potentially relevant evidence. *Perdue Farms*, 323 NLRB 345, 348 (1997), *affd. in relevant part*, 144 F.3d 830, 833-34 (D.C. Cir. 1998). The Board's authority to subpoena evidence includes the authority to subpoena evidence concerning anticipated defenses.

*NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005, 1008-09 (9th Cir. 1996). See also *NLRB v. Dutch Boy, Inc.*, 606 F.2d 929, 933 n.4 (10th Cir. 1979).

In objecting to a subpoena for the production of documents, the subpoenaed party cannot rely upon bare assertions in the broadest of terms. *NLRB v. Dutch Boy, Inc.* 98 L.R.R.M. (BNA) 2396, 2398 (W.D. Okla. 1978), *aff'd*, 606 F.2d 929 (10th Cir. 1979) (party objecting to a Board subpoena on the grounds of relevance must show by specific evidence why such documents do not relate to or touch upon the issue in controversy). Respondents must specifically identify why each objection has merit. Absent such specific showings, as is the case here, the documents must be produced. *Id.*

### ***III. Respondent's General Objections Are Unfounded***

Respondent objects to the production of certain unspecified documents that it claims are protected by the right of privacy and/or confidentiality of both the union and various individuals who are not parties to this action. Respondent's general objection does not describe the documents it seeks to protect, or explain which subpoena paragraphs implicate privacy rights or confidentiality concerns.

The party petitioning to revoke a subpoena on the basis that it seeks confidential information bears the burden of establishing that the information sought is confidential and that its disclosure will result in a "clearly defined and serious injury to the moving party." *Transcor, Inc. v. Furney Charters*, 212 F.R.D. 588, 592 (D. Kan. 2003); *Diamond State Ins. Co. v. Rebel Oil Co., Inc.*, 157 F.R.D. 691, 697 (D. Nev. 1994). Additionally, the party seeking revocation must support its claim with a sufficient description of the nature of the information sought to enable the party seeking the information to make an informed response to the claim. *Transcor Inc.*, 212 FRD at 592; *Diamond State Ins. Co.*, 157 FRD at 697.

In this case, Respondent has not met its burden of establishing that the subpoena seeks confidential or privileged information. Furthermore, to the extent that the subpoenas request evidence concerning Respondent's representation of other bargaining unit employees, such evidence is plainly relevant to the allegations concerning Respondent's actions in refusing to process Kastens' grievances to arbitration and its alleged attempt to cause the discharge of Kastens and Lehman. There is no legal precedent to

support Respondent's contention that the General Counsel must be prohibited from obtaining information that concerns or names other bargaining unit employees, and relevant information includes not only information relating specifically to an alleged discriminatory action but also includes background evidence necessary to place Respondent's actions in context. See *Perdue Farms, Inc. v. NLRB*, 144 F.3d 830, 834 (D.C. Cir. 1998). Accordingly, Respondent's general objections do not support limiting or revoking the subpoena in any manner, and Respondent must be ordered to comply with the subpoenas by providing all responsive documents.

#### ***IV. Respondent's Specific Objections Lack Merit***

##### ***A. Respondent Failed to Establish Attorney-Client and Attorney Work-Product Privileges***

###### ***1. Respondent's Petition to Revoke Does Not Provide Sufficient Information to Evaluate Its Privilege Claims***

Respondent objects to the production of certain documents sought by paragraphs 3, 6, 7, 8, 9, and 10 of the District 70 Subpoena and paragraphs 2, 4, and 6 of the Aero Lodge 839 Subpoena because they seek documents and communications that *may* be protected by attorney-client and attorney work-product privileges. Respondent's Petition to Revoke neither specifically identifies which documents it claims are subject to privilege nor provides sufficient information to even begin to evaluate its claim.

Conclusory claims of attorney-client and attorney work-product privileges do not satisfy a subpoenaed party's burden of proof to proffer specific evidence substantiating its assertion. *Coastal States Gas Corp. v. Dept of Energy*, 617 F.2d 854, 861 (DC Cir. 1980) (conclusory claim of attorney work product does not satisfy burden of proof); *U.S. v. Olin*, 809 F.2d 1411, 1415 (9th Cir. 1987) (attorney-client privilege is to be strictly construed because it is an obstacle to the investigation of the truth). Indeed, no conclusion concerning such privilege claims is possible in the absence of a showing by some proffer of specific evidence supporting each such claim. *NLRB v. Dutch Boy, Inc.*, 98 L.R.R.M. 2396, 2398 (1978), *aff'd*, 606 F.2d 929 (10th Cir. 1979). Parties withholding documents as privileged must identify and describe the documents in sufficient detail to enable the demanding party to assess the applicability of the privilege of protection Fed. R. Civ. P. 45(d)(2)(A). "Without an in camera inspection of allegedly privileged

documents, the party claiming the privilege would be able to shield any document from disclosure by merely including it in a privilege log.” See *CNN America, Inc.*, 352 NLRB 448, 448-449 (2008). Boilerplate objections or blanket refusals are insufficient to assert a privilege. *Burlington Northern & Santa Fe Ry Corp. v. United States Dist. Court for Dist. of Montana*, 408 F.3d 1142, 1148 (9<sup>th</sup> Cir. 2005).

If a subpoenaed party wishes to withhold subpoenaed documents based on a claim of privilege, it must identify which subpoenaed documents it is withholding and must support its claim with a description of the nature of the documents not produced that is sufficient to enable the party that subpoenaed the documents to contest the claim. Fed. R. Civ. P. 45(d)(2). Thus, the subpoenaed party may be required to create a privilege log, identifying the allegedly privileged documents in sufficient detail to permit an informed decision as to whether the documents at issue meet all elements of the claimed privilege or protection. *U.S. v. Construction Prods. Research, Inc.*, 73 F.3d 464, 473 (2<sup>d</sup> Cir. 1996). Insofar as a party contends that material within the scope of a subpoena is privileged, the material may be submitted to the Administrative Law Judge for an *in camera* inspection before a ruling on a petition to revoke is made. *Brink’s, Inc.*, 281 NLRB 468, 470 (1986). See also *U.S. v. International Broth. of Teamsters*, 119 F.3d 210, 214 (2<sup>nd</sup> Cir. 1997).

In this case, even though the subpoena instructed Respondent to prepare a log to address any asserted privileges, Respondent’s petition simply asserts a privilege without providing any support for its position or any information to allow the Administrative Law Judge to determine whether a privilege might apply. Accordingly, Respondent must be ordered to produce the requested information. Alternatively, Respondent should be ordered to create the requisite privilege log so that the General Counsel may make an informed response to Respondent’s claims of privilege and, if necessary, present the documents to the Administrative Law Judge for an *in camera* inspection.

***2. Respondent May Not Utilize Attorney-Client and Attorney Work-Product Privileges to Shield Otherwise Producing Information***

The attorney-client privilege “protects only those disclosures . . . necessary to obtain informed legal advice . . . which might not have been made absent the privilege.” *Fisher v. U.S.*, 425 U.S. 391, 403

(1976); *Patrick Cudahy, Inc.*, 288 NLRB 968, 969 (1988). The Board has held that otherwise producible items, such as corporate records, do not become privileged merely because they have been transferred between the client and the attorney. *Id.* at 971, n.13. Likewise, the work product doctrine is not so broad that “all written materials obtained or prepared by an adversary’s counsel with an eye toward litigation are necessarily free from discovery in all cases.” *Hickman v. Taylor*, 329 U.S. 495, 511 (1947).

In this case, it is evident from Respondent’s Petition to Revoke that it seeks to avoid producing relevant documents based on a tenuous claim of attorney-client privilege. Respondent objects to the production of documents that simply could not constitute privileged information. In each paragraph alleged to seek privileged communications, the relevant subpoena paragraph is narrowly tailored to request information only from November 1, 2013, until May 23, 2014, which corresponds to the period in which Respondent would have been expected to process the grievances that are the subject of Complaint paragraph 7 and ends when Respondent notified Kastens that it would not process his grievances to arbitration. Considering that the first charge in this matter was not filed until July 18, 2014, it is difficult to understand how the requested documents were created with an eye toward litigation.

Furthermore, based on the subject matter alone, there is no reasonably basis for concluding that requested information could reasonably include privileged material. Paragraph 3 of the District 70 Subpoena requests documents related to Respondent’s meetings concerning Kastens’ grievances; Paragraph 6 seeks documents obtained during Respondent’s investigations of said grievances; Paragraph 7 requests all documents Respondent relied upon in processing Kastens’ grievances; and Paragraph 8 seeks documents related to Respondent’s communications with Kastens. Likewise, paragraphs 2, 4, and 6 of the Local Lodge 839 Subpoena merely seek Respondent’s communications regarding Kastens’ grievances and documents obtained during the grievance investigations. The documents requested by each subpoena unquestionably are relevant to matters in issue as they relate to Respondent’s representation of Kastens, which is the subject of Complaint Paragraph 7. Respondent has not demonstrated that the requested information is privileged or provided any evidence in support of its claim, and it must be ordered to provide the information.

Respondent's Petition to Revoke similarly fails to demonstrate that documents evincing Howard Johnson's communications with the Employer concerning Kastens and Lehman, as requested in paragraph 9 and 10 constitute privileged documents or communications. Again, the subpoena only seeks documents from November 1, 2013, until May 23, 2014, and seeks evidence that is plainly relevant to the allegations of Complaint paragraphs 5 and 6. Accordingly, Respondent must be ordered to provide the responsive documents.

***B. Respondent's Petition Fails to Demonstrate a "Union Investigation and Communications Privilege" to Withhold Relevant Evidence***

Respondent seeks to withhold documents responsive to a number of paragraphs of each subpoena claiming that the subpoenas seek "communications and work product made or created by the Union and its officials during any internal investigation related to these proceedings." For the following reasons, Respondent's union-communications privilege claim must be rejected.

Under FRE 501, common law principles generally govern a claim of privilege. It is settled that any claim of privilege against disclosure of probative evidence must be strictly construed. See *Jaffee v. Redmond*, 518 U.S. 1, 9 (1996); *Trammel v. United States*, 445 U.S. 40, 51 (1980).

Respondent's Petition to Revoke simply seeks to create a new privilege without any relevant legal precedent to support its position. Although Respondent cites a number of cases that permit a union to withhold internal communications from *an employer*, these cases are inapposite and do not stand for the proposition that a union is permitted to withhold relevant documents from the General Counsel simply because those documents include internal union communications. The considerations that support the protection of union-employee communications related to Section 7 activity do not apply when the requesting party is the NLRB rather than an employer. Thus, there is no union-communications privilege that permits Respondent to withhold relevant documents from the General Counsel.

Finally, even assuming the existence of a union-communications privilege, such privilege would be outweighed in this case by the clear relevance of the requested documents. The relevant paragraphs clearly seek relevant information concerning the manner in which Respondent processed Kastens'

grievances and its actions in attempting to cause the discharge of Kastens and Lehman by reporting an alleged violation of the Employer's policies. Respondent's communications related to these allegations are necessary both to evaluate Respondent's actions and to respond to its affirmative defenses. Accordingly, Respondent must be required to produce responsive documents even to the extent that those documents constitute communications that Respondent perceives to be internal work product.

***C. The Subpoenas Are Not Overly Broad or Unduly Burdensome***

Respondent argues that paragraphs 8, 11, and 12 of the District 70 subpoena are overly broad and require production of information that is not germane to the proceedings in this matter. Contrary to Respondent's claim, the relevant paragraphs seek information that is directly relevant to the proceedings in this matter. Paragraph 8 seeks documents concerning all communications between Respondent and Kastens between November 1, 2013, and May 23, 2014, which is the time period during which the grievances that are the subject of Complaint Paragraph 7 were outstanding and unresolved. Thus, the requested communications are anticipated to include evidence relevant to evaluating Respondent's representation of Kastens. Additionally, even those communications that are claimed to be unrelated to Kastens' grievances may be relevant to evaluating Respondent's animus toward Kastens' dissident union activity.

Paragraphs 11 and 12 request reports of a violation of the Employer's policies received by Howard Johnson and documents concerning Johnson's communications with the Employer concerning potential violations of the Employer's policies for the period between November 1, 2013, and May 23, 2014. The documents requested by paragraphs 11 and 12 are anticipated to include evidence relevant to evaluating Johnson's agency status, and specifically relevant to Complaint Paragraph 5, which alleges that Respondent (by Johnson) requested that the Employer investigate Kastens' and Lehman's actions and thereby caused their discharge because of their dissident union activities.

Respondent also contends that production of the documents sought by Paragraphs 8, 11, and 12 would be unduly burdensome. Again, Respondent's position is conclusory and unsupported. A party seeking revocation of a subpoena based on a claim that it is unduly burdensome has the burden of



establishing that compliance with the Subpoena is unreasonable, burdensome, or would cause undue hardship and expense. *See FTC v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir. 1977), *cert. denied*, 431 U.S. 974 (1977). This burden is not easily met. *EEOC v. Maryland Cup Corp.*, 785 F.2d 471, 477 (4th Cir. 1986), *cert. denied* 479 U.S. 815 (1986). The fact that compliance with a subpoena may require the production of bulky, voluminous or numerous documents is insufficient to establish that it is burdensome and does not serve as an excuse for noncompliance. The party seeking revocation must show that compliance with the Subpoena “would seriously disrupt normal business operations.” *See, e.g., United Aircraft*, 200 F. Supp. at 51. *See also EEOC v. Citicorp Diners Club, Inc.*, 985 F.2d 1036, 1040 (10th Cir. 1993); *G.H.R. Energy Corp.*, 707 F.2d at 113-14. Thus, a party cannot refuse to comply with a subpoena seeking relevant information merely because compliance may require the production of a large volume of documents. *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507, 513-14 (4th Cir. 1996); *G.H.R. Energy Corp.*, 707 F.2d at 113-14. On the contrary, it may be presumed that an entity that maintains a large volume of records is sufficiently equipped to locate and produce them. *See Carolina Food Processors, Inc.*, 81 F.3d at 513-14, *citing, inter alia, G.H.R. Energy Corp.*, 707 F.2d at 114; and *United Aircraft*, 200 F. Supp. at 51.

In this case, Respondent has not demonstrated that compliance with paragraphs 8, 11, and 12 would require the production of a large volume of documents. Considering that the paragraphs only seek records from November 1, 2013, until May 23, 2014, there is no basis for assuming that a large volume of responsive documents even exist. Furthermore, even if one assumes that there are a large number of responsive documents, Respondent has failed to demonstrate that it is not sufficiently equipped to locate and produce them.

For the above reasons, Respondent has not demonstrated that the subpoena is overly broad or that production would be unduly burdensome, and it should be ordered to produce the documents requested by the subpoena.

*V. Conclusion*

As demonstrated above, Counsel for the General Counsel's subpoena fully complies with Section 102.31 of the Board's Rules and Regulations. The Subpoena is tailored to seek documents and communications relevant to issues raised by the pleadings and is not overly broad or unduly burdensome. Further, the Subpoena sets forth an appropriate procedure for the handling of documents and communications subject to claims of privilege, and Respondent has failed to substantiate its claims that responsive information is confidential or constitutes protected union work product. Accordingly, it is respectfully requested that Respondent's petition to revoke be denied and that Respondent be directed to provide the documents.

Respectfully submitted,

Dated: January 28, 2015

/s/ Michael Werner

Michael E. Werner  
Counsel for the General Counsel  
National Labor Relations Board  
Subregion 17  
8600 Farley Street, Suite 100  
Overland Park, Kansas 66212-4677

Case 14-CB-133028

**STATEMENT OF SERVICE**

I hereby certify that I have this date served copies of the foregoing Statement in Opposition to Respondent's Petition to Revoke In Part Subpoenas Duces Tecum pursuant to the National Labor Relations Board's Rules and Regulations 102.114(i) by electronically filing with the Division of Judges with service by electronic mail on the parties identified below.

Dated: January 28, 2015

/s/ Michael Werner

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Michael E. Werner  
Counsel for the General Counsel

**Counsel for Respondent:**

Rod Tanner  
rtanner@rodtannerlaw.com

Matt Pierce  
mpierce@rodtannerlaw.com

**Charging Party**

Ryan Kastens  
ryankastens@gmail.com

**SUBPOENA DUCES TECUM****UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD**

Custodian of Records, International Association of Machinists and Aerospace Workers, District Lodge  
 To 70 & Local Lodge 839  
3830 S. Meridian, Wichita, Kansas 67217

As requested by MICHAEL E. WERNER, Counsel for General Counsel

whose address is 8600 Farley St Ste 100, Overland Park, KS 66212-4677  
 (Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge  
 \_\_\_\_\_ of the National Labor Relations Board

at Wichita Federal Courthouse, Bankruptcy Courtroom, 401 N MARKET

in the City of WICHITA, KS

on Thursday, February 19, 2015 at 9:00 AM or any adjourned

International Association of Machinists and Aerospace Workers, AFL-CIO  
District 70 and Local Lodge 839 (Spirit Aerosystems)  
 or rescheduled date to testify in 14-CB-133028

(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

**SEE ATTACHMENT**

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings) and 29 C.F.R. Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

**B-1-KUHZMR**

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Overland Park, KS

Dated: January 21, 2015



*Paul H. Rame*  
 Chairman, National Labor Relations Board

**NOTICE TO WITNESS.** Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

# ATTACHMENT

## DEFINITIONS AND INSTRUCTIONS

- a. **“Document”** means any existing printed, typewritten or otherwise recorded material of whatever character, records stored on computer or electronically, records kept on microfiche or written by hand or produced by hand and graphic material, including without limitation, checks, cancelled checks, computer hard drives, discs and/or files and all data contained therein, computer printouts, E-mail communications and records, any marginal or “post-it” or “sticky pad” comments appearing on or with documents, licenses, files, letters, facsimile transmissions, memoranda, telegrams, minutes, notes, contracts, agreements, transcripts, diaries, appointment books, reports, records, payroll records, books, lists, logs, worksheets, ledgers, summaries of records of telephone conversations, summaries of records of personal conversations, interviews, meetings, accountants’ or bookkeepers’ work papers, records of meetings or conference reports, drafts, work papers, calendars, interoffice communications, financial statements, inventories, news reports, periodicals, press releases, graphs, charts, advertisements, statements, affidavits, photographs, negatives, slides, disks, reels, microfilm, audio or video tapes and any duplicate copies of any such material in the possession of, control of, or available to the subpoenaed party, or any agent, representative or other person acting in cooperation with, in concert with or on behalf of the subpoenaed party.
- b. **“Respondent”** means International Association of Machinists and Aerospace Workers, AFL-CIO District 70 and Local Lodge 839 and their officers, representatives, and stewards.
- c. **“Employer”** means Spirit Aerosystems, Inc.
- e. **“Person” or “persons”** means natural persons, corporations, limited liability companies, partnerships, sole proprietorships, associations, organizations, trusts, joint ventures, groups of natural persons or other organizations, or any other kind of entity.
- f. **“Period covered by this subpoena”** means the period from November 1, 2013, through May 23, 2014, and the subpoena seeks only documents from that period unless another period is specified. This subpoena request is continuing in character and if additional responsive documents come to your attention after the date of production, such documents must be promptly produced.
- g. Any copies of documents that are different in any way from the original, such as by interlineation, receipt stamp, notation, or indication of copies sent or received, are considered original documents and must be produced separately from the originals.
- h. If any document covered by this subpoena contains codes or classifications, all documents explaining or defining the codes or classifications used in the document must also be produced.

- i. Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- j. All documents produced pursuant to this subpoena should be presented as they are kept in the usual course of business or organized by the subpoena paragraph to which the document or set of documents is responsive.
- k. This subpoena applies to documents in your possession, custody, or control.
- l. If a claim of privilege is made as to any document which is the subject of this subpoena, a claim of privilege must be expressly made and you must describe the nature of the withheld document, communication, or tangible thing in a manner that, without revealing information itself privileged or protected, will enable an assessment of the claim to be made.
- m. Unless otherwise stated, this subpoena does not supersede, revoke or cancel any other subpoena(s) previously issued in this proceeding.

## **DOCUMENTS TO BE PRODUCED**

1. Documents that will show the identity of the officers, representatives, and stewards of IAM District 70 and Local Lodge 839 for the period covered by this subpoena, along with documents describing the title holders' job duties and responsibilities.
2. For the period covered by this subpoena, all grievances filed by or on behalf of Ryan Kastens.
3. For the period covered by this subpoena, documents describing and/or memorializing all meetings (internal and with the Employer) concerning grievances filed by or on behalf of Ryan Kastens, including, but not necessarily limited to, written communications and meeting notes.
4. For the period covered by this subpoena, documents describing, constituting, or memorializing all communications between Respondent and the Employer concerning Ryan Kastens and/or grievances filed by or on behalf of Ryan Kastens.
5. To the extent not already provided in response to paragraphs 3 and 4, all documents provided to Respondent by the Employer concerning Ryan Kastens for the period covered by this subpoena.
6. To the extent not already provided in response to other paragraphs of this subpoena, documents obtained during Respondent's investigation of grievances filed by or on behalf of Ryan Kastens during the period covered by this subpoena, along with Respondent's investigatory notes.
7. To the extent not already provided in response to other paragraphs of this subpoena, all documents relied on by Respondent in processing Ryan Kastens suspension and discharge grievances, along with documents showing the individuals involved in processing Kastens' grievances during the period covered by this subpoena.
8. For the period covered by this subpoena, documents describing, constituting, or memorializing all communications between the Union and Ryan Kastens.
9. For the period covered by this subpoena, documents describing, constituting, or memorializing all communications between Howard Johnson and the Employer concerning Ryan Kastens.
10. For the period covered by this subpoena, documents describing, constituting, or memorializing all communications between Howard Johnson and the Employer concerning Jarrod Lehman.
11. For the period covered by this subpoena, documents constituting or memorializing reports of a potential violation of the Employer's policies received by Howard Johnson.

12. For the period covered by this subpoena, all communications between Howard Johnson and the Employer concerning a potential violation of the Employer's policies.
13. For the period from January 1, 2014, until January 31, 2014, all communications between an employee of the Employer and the Union concerning the dissemination of an Employer video.
14. For the period covered by this subpoena, documents demonstrating Howard Johnson's authority to process and resolve employees' complaints and grievances.
15. For the period from May 23, 2013, until May 23, 2014, documents showing all grievances processed by Respondent concerning the discharge of one or more of the Employer's employees, along with documents showing the reason for the discharge and the resolution of the grievance.
16. For the period from May 23, 2013, until May 23, 2014, documents showing all grievances processed by Respondent concerning the suspension of one or more of the Employer's employees, along with documents showing the reason for the suspension and the resolution of the grievance.
17. In lieu of the items specified in paragraphs 14, 15, and 16, a written summary, signed and sworn to by an officer, compiled from the subpoenaed documents containing all the information called for in those paragraphs may be furnished; provided that all records called for by those paragraphs, and all others used in the compilation of the summary are made available to an agent of the National Labor Relations Board for the purpose of checking the accuracy of the summary, sufficiently in advance of the hearing to enable the accuracy to be verified.



**SUBPOENA DUCES TECUM****UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD**

To Custodian of Records, International Association of Machinists and Aerospace Workers, Aero Lodge 839  
3917 E. MacArthur Road, Wichita, Kansas 67210

As requested by MICHAEL E. WERNER, Counsel for General Counsel

whose address is 8600 Farley St Ste 100, Overland Park, KS 66212-4677  
 (Street) (City) (State) (ZIP)

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at Wichita Federal Courthouse, Bankruptcy Courtroom, 401 N MARKET

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on Thursday, February 19, 2015 at 9:00 AM or any adjourned

International Association of Machinists and Aerospace Workers, AFL-CIO  
District 70 and Local Lodge 839 (Spirit Aerosystems)

or rescheduled date to testify in 14-CB-133028

(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

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If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings) and 29 C.F.R. Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

**B-1-KUH577**

Issued at Overland Park, KS

Dated: January 21, 2015



*Paul H. Rouse*  
 Chairman, National Labor Relations Board

**NOTICE TO WITNESS.** Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

## ATTACHMENT

### DEFINITIONS AND INSTRUCTIONS

- a. **“Document”** means any existing printed, typewritten or otherwise recorded material of whatever character, records stored on computer or electronically, records kept on microfiche or written by hand or produced by hand and graphic material, including without limitation, checks, cancelled checks, computer hard drives, discs and/or files and all data contained therein, computer printouts, E-mail communications and records, any marginal or “post-it” or “sticky pad” comments appearing on or with documents, licenses, files, letters, facsimile transmissions, memoranda, telegrams, minutes, notes, contracts, agreements, transcripts, diaries, appointment books, reports, records, payroll records, books, lists, logs, worksheets, ledgers, summaries of records of telephone conversations, summaries of records of personal conversations, interviews, meetings, accountants’ or bookkeepers’ work papers, records of meetings or conference reports, drafts, work papers, calendars, interoffice communications, financial statements, inventories, news reports, periodicals, press releases, graphs, charts, advertisements, statements, affidavits, photographs, negatives, slides, disks, reels, microfilm, audio or video tapes and any duplicate copies of any such material in the possession of, control of, or available to the subpoenaed party, or any agent, representative or other person acting in cooperation with, in concert with or on behalf of the subpoenaed party.
- b. **“Respondent”** means International Association of Machinists and Aerospace Workers, AFL-CIO District 70 and Local Lodge 839 and their officers, representatives, and stewards.
- c. **“Employer”** means Spirit Aerosystems, Inc.
- e. **“Person”** or **“persons”** means natural persons, corporations, limited liability companies, partnerships, sole proprietorships, associations, organizations, trusts, joint ventures, groups of natural persons or other organizations, or any other kind of entity.
- f. **“Period covered by this subpoena”** means the period from November 1, 2013, through May 23, 2014, and the subpoena seeks only documents from that period unless another period is specified. This subpoena request is continuing in character and if additional responsive documents come to your attention after the date of production, such documents must be promptly produced.
- g. Any copies of documents that are different in any way from the original, such as by interlineation, receipt stamp, notation, or indication of copies sent or received, are considered original documents and must be produced separately from the originals.
- h. If any document covered by this subpoena contains codes or classifications, all documents explaining or defining the codes or classifications used in the document must also be produced.

- i. Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- j. All documents produced pursuant to this subpoena should be presented as they are kept in the usual course of business or organized by the subpoena paragraph to which the document or set of documents is responsive.
- k. This subpoena applies to documents in your possession, custody, or control.
- l. If a claim of privilege is made as to any document which is the subject of this subpoena, a claim of privilege must be expressly made and you must describe the nature of the withheld document, communication, or tangible thing in a manner that, without revealing information itself privileged or protected, will enable an assessment of the claim to be made.
- m. Unless otherwise stated, this subpoena does not supersede, revoke or cancel any other subpoena(s) previously issued in this proceeding.

## **DOCUMENTS TO BE PRODUCED**

1. For the period covered by this subpoena, all grievances filed by or on behalf of Ryan Kastens.
2. For the period covered by this subpoena, documents describing and/or memorializing all meetings (internal union meetings and meetings with the Employer) concerning grievances filed by or on behalf of Ryan Kastens, including, but not necessarily limited to, written communications and meeting notes.
3. For the period covered by this subpoena, documents describing, constituting, or memorializing all communications between Respondent and the Employer concerning Ryan Kastens and/or grievances filed by or on behalf of Ryan Kastens.
4. For the period covered by this subpoena, documents showing all Respondent's internal communications (including but not necessarily limited to letters, memoranda, emails, text messages, and voice messages) concerning the processing of grievances filed by or on behalf of Ryan Kastens.
5. To the extent not already provided in response to paragraphs 3 and 4, all documents provided to Respondent by the Employer concerning Ryan Kastens for the period covered by this subpoena.
6. To the extent not already provided in response to other paragraphs of this subpoena, documents obtained during Respondent's investigation of grievances filed by or on behalf of Ryan Kastens during the period covered by this subpoena, along with Respondent's investigatory notes.